



Mr. Steven Schwed
d/b/a Thunder Well and Pump
29 Meetinghouse Road
PO Box 1321
Merrimack, NH 03054

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 01-012**

March 29, 2001

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to Mr. Steven Schwed d/b/a Thunder Well and Pump, pursuant to RSA 482-B:8, II and Env-C 616. The Division is proposing that fines totaling \$ 300 be imposed against Steven Schwed d/b/a Thunder Well and Pump for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Steven Schwed d/b/a Thunder Well and Pump is an individual having a mailing address of PO Box 1321, Merrimack, NH 03054.

III. Summary of Facts and Law Supporting Claims

1. RSA 482-B regulates water well contractors and pump installers and establishes the NH Water Well Board ("Board"). Pursuant to rulemaking authority conferred by RSA 482-B:4, the Board has adopted rules to implement this regulatory program (We 100 to 1000, "Water Well Rules"). Under RSA 482-B:8 and :16, the Department of Environmental Services ("DES") has concurrent authority with the Board to enforce RSA 482-B and the Water Well Rules.
2. RSA 482-B:16, II authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 for each offense for violations of RSA 482-B or of any rule adopted or license issued under that statute. Pursuant to rulemaking authority contained therein, the Commissioner has adopted Env-C 616 to establish the schedule of fines for such violations.
3. RSA 482-B:10 requires a water well contractor to file a well completion report with the Board within 90 days following completion of the well.
4. Steven Schwed, d/b/a Thunder Well and Pump is a licensed water well contractor in the State of New Hampshire, holding license # 1051.

5. On October 9, 2000, the Division received a request from John Greene for the well completion report filed for the well drilled on his property at 3 South View Drive, Lot 1, Mont Vernon, NH. Mr. Greene asserted that the well had been drilled by Mr. Schwed/Thunder Well and Pump in 1998 or 1999.
6. On November 30, 2000, the Division received a request from Norman Poirier for the well completion report filed for the well drilled on his property at 76 Turnpike Road, New Ipswich, NH. Mr. Poirier asserted that the well had been drilled by Mr. Schwed/Thunder Well and Pump on August 3, 2000.
7. On December 6, 2000, the Division received a written complaint from Helena Vander-Heyden in reference to a well drilled on her property located at 235 Burton Highway, Wilton, NH by Mr. Schwed/Thunder Well and Pump on July 25, 2000.
8. The Board has not received well completion reports for the wells constructed at the Greene, Poirier, or Vander-Heyden properties as required by RSA 482-B:10.

IV. Violations Alleged

1. Steven Schwed d/b/a Thunder Well and Pump has violated RSA 482-B:10 by failing to submit a well completion report to the Water Well Board within 90 days of completion of the well constructed at the Green property in Mont Vernon, NH.
2. Steven Schwed d/b/a Thunder Well and Pump has violated RSA 482-B:10 by failing to submit a well completion report to the Water Well Board within 90 days of completion of the well constructed at the Poirier property in New Ipswich, NH.
3. Steven Schwed d/b/a Thunder Well and Pump has violated RSA 482-B:10 by failing to submit a well completion report to the Water Well Board within 90 days of completion of the well constructed at the Vander-Heyden property in Wilton, NH.

V. Proposed Administrative Fine

For the violations identified above, Env-C 616.02(e) specifies a fine of \$1.00 per day for each calendar day after 90 days following completion of the well up to \$100 per report.

1. For violation identified in IV.1 above, the Division is seeking a fine of \$100 pursuant to Env-C 616.02(e).
2. For the violation identified in IV.2 above, the Division is seeking a fine of \$100 pursuant to Env-C 616.02(e).
3. For violation identified in IV.3 above, the Division is seeking a fine of \$100 pursuant to Env-C 616.02(e).

The total fine being sought is \$ 300.

VI. Hearing, Required Response

You have the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, May 21, 2001 at 9:00 a.m. in Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, you are required to respond to this notice.** Please respond **no later than April 16, 2001**, using the enclosed colored form as follows:

1. If you plan to attend the hearing, please sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form.
2. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.
3. If you wish to discuss the possibility of settling the case, please sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate your interest in settling.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If you wish to have a hearing but are unable to attend as scheduled, you must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If you do not notify Mr. Ballentine in advance and do not attend the hearing, the hearing will be conducted in your absence in accordance with Env-C 204.09.

VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- * Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence, applies in this case:**
 - 1 The violation was a one-time or non-continuing violation, **and** you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm

has been corrected, and you did not benefit financially, whether directly or indirectly, from the violation.

2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
3. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed.

The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced. If you have any evidence, such as photographs, business records or other documents, that you believe show that you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

If you wish to have an informal meeting to discuss the issues, you must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If you have any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.


S-5 **COPY** Harry T. Newnam, Director
Water Division

Enclosure (*NHDES Fact Sheet #CO-2 2000*)

cc: Gretchen Rule, DES Enforcement Coordinator
Susan Alexant, DES Hearings and Rules Attorney
Water Well Board
Tony Giunta, Administrator, WSEB
Anne Edwards, Esq. - AGO
Mike Walls, Esq. - AGO
Harrison Mackey, Licensing Coordinator – DES
Norman Poirier
John Greene
Helena Vander-Heyden
DES PIP Office